

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

INTERNATIONAL UNION OF)
OPERATING ENGINEERS, LOCAL)
318 JOINT APPRENTICESHIP AND)
ADVANCED TRAINING FUND, and)
INTERNATIONAL UNION OF)
OPERATING ENGINEERS LOCAL)
UNION NO. 318)

Plaintiffs,

Case No. 25-cv-327-DWD

vs.

B EXCAVATING & CONTRACTING,)
LLC, *an Illinois Limited liability*)
Company,)

Defendant.

NOTICE OF IMPENDING DISMISSAL FOR WANT OF PROSECUTION

This matter is now before the Court following a *sua sponte* review of the record. Plaintiffs' Complaint was filed on March 7, 2025. (Doc. 1). A Summons was issued as to Defendant on March 10, 2025. (Doc. 3). The original copy of the Summons was mailed to Plaintiffs' counsel for service upon Defendant. (Doc. 3). Further, the Summons provided:

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it)...you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney....

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

(Doc. 3).

Service was never returned executed. And, as of this date, Defendant has not filed an answer, motion, or other pleading in response to the Complaint. Likewise, Plaintiffs have not updated or sought action by the Court. Therefore, the record indicates either Plaintiffs failed to effectuate service on Defendant or, if serve was proper, that Defendant failed to move, answer, or otherwise plead in response to the Complaint.

Accordingly, **NOTICE IS GIVEN** that the case will be dismissed for want of prosecution under Federal Rule of Civil Procedure 41(b) unless, within **21 days**, action is taken by Plaintiffs to (1) effect service on Defendant, or (2) if service was proper, such that Defendant failed to respond, to move for the entry of default under Federal Rule of Civil Procedure 55(a). *See* Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b)...operates as an adjudication on the merits.”); *James v. McDonald’s Corp.*, 417 F.3d 672, 681 (7th Cir. 2005) (“A district court has the authority under Federal Rule of Civil Procedure 41(b) to enter a sua sponte order of dismissal for lack of prosecution.”).

Dated: May 20, 2025

s/ David W. Dugan

DAVID W. DUGAN
United States District Judge